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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,078	03/15/2007	Caroline Deniaud	HO-P03258US0	6054
26271	7590	07/23/2010		
FULBRIGHT & JAWORSKI, LLP 1301 MCKINNEY SUITE 5100 HOUSTON, TX 77010-3095			EXAMINER BYRD, LATRICE CHENELL	
			ART UNIT 3782	PAPER NUMBER
			NOTIFICATION DATE 07/23/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/561,078	Applicant(s) DENIAUD ET AL.	
	Examiner LATRICE BYRD	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-52 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 33-52 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/16/07</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 36-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 36-37 recites the limitation "the sealing zone" in lines 7 of each claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 33-39, 42-49 and 51-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Bell (USPN 4,986,673).
5. In re claim 33, Bell discloses a flexible pouch sealed against gas, comprising:
two side walls rendered integral by at least a sealing line (185); and
a line of preferential tearing (219) provided in one of the two side walls, the line of preferential tearing being arranged for providing access to a content packaged in the pouch upon tearing the pouch along the line of preferential tearing;

Art Unit: 3782

wherein the line of preferential tearing extends along the sealing line, the distance between the line of preferential tearing and the sealing line being less than or equal to 6 mm (column 11, line 44).

6. In re claim 34, Bell discloses a pouch wherein the distance between the line of preferential tearing and the sealing line is less than or equal to 4 mm (column 11, line 44).

7. In re claim 35, Bell discloses a pouch wherein the line of preferential tearing extends facing at least one edge of the pouch, the distance between the line of preferential tearing and a pouch edge nearest the line of preferential tearing being greater than 9 mm (column 11, lines 39-42).

8. In re claim 36, Bell discloses a pouch wherein: the line of preferential tearing extends from an edge of the pouch; edges of the walls corresponding to said edge of the pouch from which the lines of preferential tearing extend are sealed together; and a notch (260) is made in the sealing zone of said edges of the walls at the line of preferential tearing.

9. In re claim 37, Bell discloses a pouch wherein: the line of preferential tearing extends from an edge of the pouch; edges of the walls corresponding to said edge of the pouch from which the line of preferential tearing extends are sealed together; and a notch (260) is made in the sealing zone of said edges of the walls at a level intermediate between the line of preferential tearing and the sealing line.

10. In re claim 38, Bell discloses a pouch wherein the distance between the edge of the sealing line towards the line of preferential tearing and the edge of the pouch facing

Art Unit: 3782

which the line of preferential tearing extends and which is the closest to the line of preferential tearing, is greater than 9 mm (column 11, lines 39-42).

11. In re claim 39, Bell discloses a pouch further comprising: another line of preferential tearing provided in the other of the two side walls, this other line of preferential tearing lying opposite the line of preferential tearing provided in the first of the two side walls.

12. In re claim 42, Bell discloses a pouch wherein each side wall is made from a film comprising a light-metal layer held between two plastic layers (column 12, lines 15-20).

13. In re claim 43, Bell discloses a pouch comprising: several sealing lines forming a multi-line sealing strip, the width of this strip being greater than 9 mm (column 11, lines 39-42).

14. In re claim 44, Bell discloses a pouch wherein each side wall in which is provided a line of preferential tearing is made from a film comprising at least one plastic layer (polyethylene film).

15. In re claim 45, Bell discloses a pouch wherein the pouch is of a type intended to undergo heat treatment for preservation treatment by heat sealing.

16. In re claim 46, Bell discloses a flexible pouch sealed against gas, comprising: two side walls rendered integral by at least a sealing line, the width of the sealing line being greater than 9 mm (column 11, lines 39-42); and

a line of preferential tearing (219) provided in one of the two side walls, the line of preferential tearing being arranged for providing access to a content packaged in the pouch upon tearing the pouch along the line of preferential tearing;

wherein the line of preferential tearing extends along the sealing line, the distance between the line of preferential tearing and the sealing line being less than or equal to 6 mm (column 11, line 44).

17. In re claim 47, Bell discloses a pouch wherein the distance between the line of preferential tearing and the sealing line is less than or equal to 4 mm (column 11, line 44).

18. In re claim 48, Bell discloses a pouch wherein: the line of preferential tearing extends from an edge of the pouch; edges of the walls corresponding to said edge of the pouch from which the line of preferential tearing extends are sealed together; and a notch (260) is made in the sealing zone of said edges of the walls at a level intermediate between the line of preferential tearing and the sealing line.

19. In re claim 49, Bell discloses a pouch further comprising: another line of preferential tearing provided in the other of the two side walls, this other line of preferential tearing lying opposite the line of preferential tearing provided in the first of the two side walls.

20. In re claim 51, Bell discloses a pouch wherein each side wall is made from a film comprising a light-metal layer held between two plastic layers (column 12, lines 15-20).

21. In re claim 52, Bell discloses a flexible pouch sealed against gas, comprising:
two side walls rendered integral by at least a sealing line (185); and

a line of preferential tearing (219) provided in one of the two side walls, the line of preferential tearing being arranged for providing access to a content packaged in the pouch upon tearing the pouch along the line of preferential tearing, in which the line of

Art Unit: 3782

preferential tearing extends along the sealing line, the distance between the line of preferential tearing and the sealing line being less than or equal to 6 mm (column 11, line 44);

the pouch capable of containing moist foodstuffs.

Claim Rejections - 35 USC § 103

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claims 40-41 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell (USPN 4,986,673) in view Olivieri et al. (USPN 6,427,420 B1).

24. In re claims 40-41 and 50, Bell discloses the claimed invention except two parallel lines of preferential tearing in the side walls of the pouch. However, Olivieri et al. teaches using two lines of preferential tearing (432,433) in side walls of a pouch less than 8mm (see col. 8, lines 18-19). It would have been obvious to one of ordinary skill in the art to have formed the side walls of the pouch of Bell with two lines of preferential tearing as taught by Olivieri et al. in order to form boundaries between the two lines of preferential tearing for guiding the tearing off a portion of the pouch for opening.

Conclusion

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LATRICE BYRD whose telephone number is (571)270-5703. The examiner can normally be reached on Mon-Thu 9:30am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LATRICE BYRD/
Examiner, Art Unit 3782

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782